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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 JAMES WILLIAMS,

11 Plaintiff,

12 v.

13 BRUCE GAGE, et al.,

14 Defendants.

CASE NO. C14-453 MJP

ORDER ON REPORT AND
RECOMMENDATION

15
16 The above-entitled Court, having received and reviewed:

- 17 1. Report and Recommendation (Dkt. No. 56)
18 2. Plaintiff's Objections to Report and Recommendation (Dkt. No. 58)
19 3. Defendants' Response to Plaintiff's Objections to Report and Recommendation (Dkt.
20 No. 59)

21 all attached declarations and exhibits and relevant portions of the court record, rules as follows:

22 IT IS ORDERED that the Report and Recommendation is ADOPTED: the Court
23 GRANTS Defendants' summary judgment motion and DISMISSES Plaintiff's claims with
24 prejudice.

1 IT IS FURTHER ORDERED that Plaintiff's motion for an extension of time is DENIED.

2 **Background**

3 Plaintiff has been housed in the Special Offender Unit at the Monroe Correctional
4 Complex (MCC-SOU) since June 2, 2011. (Dkt. No. 39-1, Exhibit 1, Declaration of Polson,
5 ¶ 4, Attachment A.) He carries a diagnosis of Bipolar I Disorder, severe with psychotic features,
6 a serious psychotic condition. (Dkt. No. 39-2, Exhibit 2, Declaration of Beck, ¶ 10.) Plaintiff's
7 § 1983 civil rights complaint covers a two-year course of involuntary administration of
8 antipsychotic medication and alleges that the involuntary administration of the drugs is a
9 violation of his rights under the Fourteenth Amendment. (Dkt. No. 9, Second Amended
10 Complaint.)

11 The Report and Recommendation (Dkt. No. 56; "R&R") prepared by Magistrate Judge
12 Brian A. Tsuchida of this district lays out in admirably thorough detail both the statutory and
13 regulatory framework within which antipsychotic medications are administered in the
14 Washington prison system (R&R at 2-4) and the history of Involuntary Antipsychotic Hearings
15 ("IAH") which have resulted in a virtually uninterrupted program of involuntary antipsychotic
16 medication of Plaintiff. (R&R at 4-12.) The Court sees no need to duplicate that narrative in this
17 order.

18 The R&R concludes by recommending that the summary judgment motion filed by
19 Defendants in this matter be granted and that Plaintiff's claims be dismissed with prejudice.
20 Plaintiff has filed objections to that Recommendation (and requested an extension of time to
21 submit additional evidence) (Dkt. No. 58), and Defendants have responded to those objections
22 and the request for an extension of time. (Dkt. No. 59.)

1 **Discussion**

2 The seminal case in the area of the involuntary antipsychotic medication of inmates is
3 Washington v. Harper (494 U.S. 210 (1990)), which held that inmates have a liberty interest in
4 being free from involuntary administration of antipsychotic drugs as a matter of due process. Id.
5 at 222. The state is, however, permitted to administer such medication to an inmate if the inmate
6 is adjudged to represent a danger to himself or others and the administration of the drugs is in the
7 inmate’s best interest. Id. at 227. Plaintiff challenges the existence of both of those elements in
8 his complaint.

9 The State of Washington has enacted an elaborate set of statutes designed to articulate the
10 conditions under which inmates may be adjudged to “gravely disabled” (RCW 70.96A.010(12))
11 or to present a “likelihood of serious harm” (RCW 70.96A.010(18)(a) and (b)) such that the
12 Department of Corrections (“DOC”) may justifiably medicate them involuntarily. *See* DOC
13 Policy 630.540 (Dkt. No. 39-2, Declaration of Beck, Exhibit 2, Attachment A).

14 Due process must be observed prior to the deprivation of the liberty interest found in
15 Harper, and the courts are charged with evaluating whether due process has been accorded an
16 inmate subjected to involuntary medication. Wilkinson v. Austin, 545 U.S. 209, 229 (2005).
17 The Supreme Court has adjudged that, in this context, due process is accorded an inmate who is
18 notified of the IAH, present at the hearing, and given the right to present and cross-examine
19 witnesses. Harper, 494 U.S. at 235. The DOC procedures at issue here require that an inmate
20 be given all those rights, and additionally (1) the right to have an advisor present, (2) the right to
21 a copy of the hearing summary and minutes of the hearing, and (3) the right to an appeal within a
22 specified period of time. (DOC Policy 630.540.)

1 A review of the extensive record presented here has convinced this Court that these due
2 process rights were scrupulously observed in Plaintiff's case. In the one instance over the two-
3 year period that the DOC policy was not observed (Plaintiff was not provided with a copy of the
4 decision from his January 16, 2014 hearing within 72 hours), his involuntary medication was
5 halted and a new hearing was scheduled. (Dkt. No. 39-2, Exhibit 2, Declaration of Beck at
6 ¶¶ 15-16; Dkt. No. 39-3, Attachments F and G.)

7 And, indeed, Plaintiff does not challenge Defendants' actions with any allegation that his
8 procedural rights were in any way compromised. He claims, rather, that his due process rights
9 were violated because the reports furnished at the hearings contained false information, the
10 medication he is being administered is not diminishing his symptoms (in fact, is making him
11 more violent), the side effects of the medication are too severe and his appeals have been
12 wrongfully denied.

13 Plaintiff's claims are either factually deficient or legally insufficient. His allegation that
14 the IAH reports are filled with falsehoods is unsupported by any admissible evidence (nor does it
15 appear that he was denied the opportunity to challenge these reports at the hearings). His
16 contention that the medications make him more violent is severely compromised by his
17 admission that many of his outbursts while medicated are intentional, calculated to force the
18 DOC to take him off the medication. (Dkt. No. 23 at 10.).¹ Defendants do not contest that there
19 are side effects to the medication administered to Plaintiff, but this Court is not prepared to
20 substitute its own judgment for the medical professionals who are personally familiar with
21 Plaintiff's case and trained to evaluate the risks associated with the drugs being prescribed.

22
23 ¹ Plaintiff argues in his objections that Harper holds that "if your behavior is worse while taking [the
24 medications] (regardless of the reasons or how antipsychotics play a role in the worse behavior) you must be taken
off antipsychotics." (Objections at 4.) Plaintiff provides no citation for this claim and the Court finds such language
nowhere in the opinion.

1 Quoting from the R&R:

2 An inmate's liberty interests are "adequately protected, and perhaps better served,
3 by allowing the decision to medicate to be made by medical professionals rather
4 than a judge." Washington, 494 U.S. at 231. By leaving the decision to medicate
5 in the hands of an inmate's mental health providers, the court is able to avoid
6 "unnecessary intrusion into either medical or correctional judgments." Vitek v.
7 Jones, 445 U.S. 480, 496 (1980). The court gives "deference... to medical
8 professionals who have the fulltime responsibility of caring for mentally ill
9 inmates" because those professionals "possess, as the courts do not, the requisite
10 knowledge and expertise to determine whether [antipsychotics] should be used in
11 an individual case." 494 U.S. at 230 n.12. Because "[t]he risks associated with
12 antipsychotic drugs are for the most part medical ones," the decision to medicate
13 is "best assessed by medical professionals." Washington, 494 U.S. at 233.

14 (R&R at 14.) In keeping with that admonition, this Court will not substitute its judgment for the
15 medical professionals with first-hand knowledge of Plaintiff's condition and the training and
16 expertise to evaluate the proper course to be taken to protect both Plaintiff and the legitimate
17 safety interests of the institution.

18 Rather than asserting the violation of any due process rights, Plaintiff is basically
19 challenging the medical opinions of the physicians who are treating him. He has not shown
20 himself to be entitled to relief on that basis. Nor has he established his Eighth Amendment,
21 "cruel and unusual punishment," claim, which would require him to demonstrate that Defendants
22 have been "deliberately indifferent" to a serious medical need. Estelle v. Gamble, 429 U.S. 97,
23 104 (1976). The fact that he disagrees with the Defendants' assessment of his condition and his
24 needs is not proof of deliberate indifference.

It appears from his most recent briefing (i.e., his objections to the R&R) that Plaintiff is
seeking more time before a decision is rendered on the pending motion. The evidence of that
request can only be found in the title of the motion (which includes the phrase "Motion for Time
Extension on Final Deposition [sic] of Summary Judgment Motion Until I Can Submit Doctor
Beaver's Report as Evidence") and in a letter from his Federal Public Defender (attached as an

1 exhibit to his objections) which discusses the scheduling of an appointment with a
2 neuropsychologist named Dr. Craig Beaver. (Objections, Exhibit 1A.) This is entirely
3 inadequate grounds for an extension of time under FRCP 56(d), which requires that any such
4 request must clearly indicate the information which is expected to be presented and how such
5 information would defeat summary judgment. Michelman v. Lincoln Life Ins. Co., 685 F.3d
6 8987, 892 (9th Cir. 2012). Plaintiff has satisfied neither of these requirements and the Court will
7 deny his request for an extension of time.

8 **Conclusion**

9 Because Plaintiff has failed to satisfy the requirements of FRCP 56(d), the Court denies
10 his request for an extension of time.

11 Because Plaintiff has failed to demonstrate, either factually or legally, a denial of his due
12 process rights as a result of the involuntary antipsychotic medication procedures administered by
13 Defendants, Defendants are entitled to summary judgment and a dismissal of all claims with
14 prejudice, and the Court so orders.

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16 The clerk is ordered to provide copies of this order to Plaintiff, to all counsel, and to the
17 Magistrate Judge.

18 Dated this 6th day of April, 2015.

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22 Marsha J. Pechman
23 United States District Judge
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